IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3155 OF 2005

Haridas Vithal Bagal ..Petitioner.

Vs.

Vitthal Sambha Nagane & Ors. ..Respondents.

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Mr.A.M.Shete for the Petitioner.

Ms.P.U.Badadare i/b Mr.P.R.Arjunwadkar for Respondent No.1.

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m, .mmm **CORAM : DR.D.Y.CHANDRACHUD, J.**

16th March, 2006.

P.C. :

1. Rule, made returnable forthwith. Counsel appearing for Respondent No.1 waives service. By consent taken up for hearing and final disposal.

2. By the impugned order dated 9th March, 2005, the Additional District Judge, Pandharpur

rejected an application for the restoration of a civil appeal which was dismissed in default on 27th July, 2004. The appeal arises out of the dismissal of a suit for specific performance. The Additional District Judge has taken serious exception to the conduct of the advocate appearing on behalf of the Petitioner who had sought several adjournments between 2000 and 2004 for getting himself prepared to argue the appeal. Counsel appearing for the parties are agreed in stating before the Court that another advocate was since engaged. In my view, it would manifestly result in a miscarriage of justice if the appeal is not restored and the Petitioner is not furnished with an opportunity of pursuing the appeal on merits. However, in so far as the Respondents are concerned, an order for the payment of costs would meet the ends of justice. In the circumstances, the Petition is allowed with the following directions :

i) The order of the Additional District Judge, Pandharpur dated 9th March, 2005 in Civil Misc. Application 68 of 2004, below Exh. 20 is quashed and set aside;

ii) The application for restoration shall stand allowed subject to the payment of costs quantified at Rs.7,500/-. Costs to be deposited before the Trial Court within a period of four weeks from today which shall be a condition precedent;

iii) The parties shall appear before the First Appellate Court for receiving directions on 17th April, 2006. In the event that the costs are deposited, the Additional District Judge shall set down the appeal for hearing and final disposal. The parties shall co-operate in the First Appellate Court in ensuring that the directions for the early hearing of the appeal are duly complied with.

The Petition is accordingly disposed of. There shall be no order as to costs.